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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,510	11/14/2003	Thomas M. Sauter	KCOS121897	9834

26389 7590 12/04/2007  
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC  
1420 FIFTH AVENUE  
SUITE 2800  
SEATTLE, WA 98101-2347

EXAMINER
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VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

MAIL DATE	DELIVERY MODE
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12/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/714,510

Applicant(s)

SAUTER, THOMAS M.

Examiner

Frank Vanaman

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 27 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-30 is/are pending in the application.
- 4a) Of the above claim(s) 4-14, 21 and 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-26, 29 is/are allowed.
- 6) ☒ Claim(s) 1, 17, 19, 23, 27, 28 and 30 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 15, 16 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **Status of Application**

1. Applicant's amendment, filed Sept 27, 2007, has been entered in the application. Claims 1-17 and 19-30 are pending, with claims 4-14, 21 and 22 withdrawn from consideration.

### **Claim Rejections - 35 USC § 102**

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 17, 19, 23, 27, 28 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Laughlin (US 5,692,765, cited previously). Laughlin teaches a binding having a toe strap (16) with a movable end (70) allowing it to be lengthened and shortened, and connected to a first linkage (56), an ankle strap (18) having a movable end (72) connected to a linkage (58) to allow it to be lengthened and shortened, the linkages being different sub-linkages connected to one another (by 32) forming a single composite linkage, an operable fastener device which may be adjustable in position, as broadly claimed, (57 and/or 74) on either the toe or ankle strap, wherein a moving of the fastener, which constitutes an adjustment, as broadly claimed, allows a lengthening or shortening of the respective strap (i.e., by manual motion), wherein a moving of one fastener (57 or 74) to shorten one strap (e.g., by the operation of 32, 34), causes a corresponding shortening of the other strap, wherein the connection of the linkages (at 32) allows lengthening of the other of the straps - e.g., a lengthening motion exerted on a fastener (57 or 74) with the connecting element between the linkages (32, 34) in a non-locked condition causes a corresponding lengthening motion of the connecting element (i.e., 34 moves down) causing multiple linkage portions to travel, allowing a lengthening in the other of the linkages (56, if 74 is moved, or 58 if 70 is moved), wherein the linkage comprises cables.

#### **Allowable Subject Matter**

4. Claims 24-26 and 29 are allowed.
5. Claims 2, 3, 15, 16 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 4-14, 21 and 22 remain withdrawn from consideration.

#### **Response to Comments**

7. Applicant's comments, filed with the amendment, have been carefully considered. Applicant casts some question as to whether elements 57 and/or 74 can be called fasteners. Element 57 joins linkage portion 56 with strap portion 70, constituting a fastening between at least 56 and 70; element 74 joins linkage portion 58 with strap portion 72, constituting a fastening between at least 58 and 72. Applicant has asserted that "[i]t stands to reason that the act of 'adjusting' by the fastener is done at the strap, not remote from the strap..." (in the papers at page 8, under "REMARKS") and the examiner notes that such a reasoning is indeed one possible means for an adjustment to be made, however applicant has merely broadly recited that the fastener is adjustable, absent any further limitations actually recited in the claims. The positions of the fasteners taught by Laughlin may be adjusted, to the breadth that applicant's claims recite an adjustable fastener. These positions may be adjusted either directly (i.e., through direct manual manipulation of elements 57 and/or 74) or remotely through the action of portions 56, 58, 32 and 34. In this instance, applicant may be suggesting that some un-recited facet of the claimed adjustability (i.e., a further limitation) be considered in combination with the recitation which is actually recited. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). From MPEP 2:111: "During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. In *re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the

opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)."

Many of the difficulties encountered in the prosecution of patent applications may be alleviated if each applicant includes, at the soonest possible time, claims varying from the broadest to which he or she believes he or she is entitled to the most detailed that he or she is willing to accept.

### Conclusion

8. Applicant's amendment necessitated the new and/or modified ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



11/27/07